

SRA FILE #847-8003

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JILL A. AZZARELLO,

Plaintiff,

Docket No.: 08 CV 2853

-against-

AMENDED ANSWER

CDL HOTELS USA, INC., CDL (NYL) LIMITED,
CDL (NEW YORK) L.L.C., CITY
DEVELOPMENTS LIMITED (CDL) and
MILLENIUM & COPTHORNE PLC.,

Defendants.

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Defendants, CDL HOTELS USA, INC., CDL (NYL) LIMITED and CDL (NEW YORK) L.L.C., by their attorneys, STRONGIN ROTHMAN & ABRAMS, LLP, by way of answer to the Complaint of the plaintiff, respectfully state and allege upon information and belief:

ANSWERING THE FIRST COUNT

1. Denies each and every allegation contained in paragraph "1" of the First Count of the Complaint except admits that plaintiff, Jill A. Azzarello was and still is a resident of the County of Erie in the State of New York.
2. Admits to the allegations contained in paragraph "2" of the First Count of the Complaint.
3. Denies each and every allegation contained in paragraph "3" of the First Count of the Complaint except admits that defendant CDL HOTELS USA, INC. was authorized to conduct business in the State of New York at all times hereinafter mentioned.
4. Denies each and every allegation contained in paragraph "4" of the First Count of the Complaint.

5. Denies each and every allegation contained in paragraph "5" of the First Count of the Complaint.

6. Denies each and every allegation contained in paragraph "6" of the First Count of the Complaint.

7. Denies each and every allegation contained in paragraph "7" of the First Count of the Complaint.

8. Denies each and every allegation contained in paragraph "8" of the First Count of the Complaint.

9. Denies each and every allegation contained in paragraph "9" of the First Count of the Complaint.

10. Denies each and every allegation contained in paragraph "10" of the First Count of the Complaint.

11. Denies each and every allegation contained in paragraph "11" of the First Count of the Complaint.

12. Denies each and every allegation contained in paragraph "12" of the First Count of the Complaint.

13. Denies each and every allegation contained in paragraph "13" of the First Count of the Complaint.

14. Denies each and every allegation contained in paragraph "14" of the First Count of the Complaint.

15. Denies each and every allegation contained in paragraph "15" of the First Count of the Complaint.

16. Denies each and every allegation contained in paragraph "16" of the First Count of the Complaint.

17. Denies each and every allegation contained in paragraph "17" of the First Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

18. Denies each and every allegation contained in paragraph "18" of the First Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE SECOND COUNT

19. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "18" of the First Count of the Complaint.

20. Denies each and every allegation contained in paragraph "20" of the Second Count of the Complaint.

21. Denies each and every allegation contained in paragraph "21" of the Second Count of the Complaint.

22. Denies each and every allegation contained in paragraph "22" of the Second Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

23. Denies each and every allegation contained in paragraph "23" of the Second Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE THIRD COUNT

24. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "23" of the Complaint.

25. Denies each and every allegation contained in paragraph "25" of the Third Count of the Complaint.

26. Denies each and every allegation contained in paragraph "26" of the Third Count of the Complaint.

27. Denies each and every allegation contained in paragraph "27" of the Third Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

28. Denies each and every allegation contained in paragraph "28" of the Third Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE FOURTH COUNT

29. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "28" of the Complaint.

30. Denies each and every allegation contained in paragraph "30" of the Fourth Count of the Complaint except admits that plaintiff, Jill A. Azzarello was and still is a resident of the County of Erie in the State of New York.

31. Admits to the allegations contained in paragraph "31" of the Fourth Count of the Complaint.

32. Denies each and every allegation contained in paragraph "32" of the Fourth Count of the Complaint except admits that defendant CDL (NYL) LIMITED was authorized to conduct business in the State of New York at all times hereinafter mentioned.

33. Denies each and every allegation contained in paragraph "33" of the Fourth Count of the Complaint.

34. Denies each and every allegation contained in paragraph "34" of the Fourth Count of the Complaint.

35. Denies each and every allegation contained in paragraph "35" of the Fourth Count of the Complaint.

36. Denies each and every allegation contained in paragraph "36" of the Fourth Count of the Complaint.

37. Denies each and every allegation contained in paragraph "37" of the Fourth Count of the Complaint.

38. Denies each and every allegation contained in paragraph "38" of the Fourth Count of the Complaint.

39. Denies each and every allegation contained in paragraph "39" of the Fourth Count of the Complaint.

40. Denies each and every allegation contained in paragraph "40" of the Fourth Count of the Complaint.

41. Denies each and every allegation contained in paragraph "41" of the Fourth Count of the Complaint.

42. Denies each and every allegation contained in paragraph "42" of the Fourth Count of the Complaint.

43. Denies each and every allegation contained in paragraph "43" of the Fourth Count of the Complaint.

44. Denies each and every allegation contained in paragraph "44" of the Fourth Count of the Complaint.

45. Denies each and every allegation contained in paragraph "45" of the Fourth Count of the Complaint.

46. Denies each and every allegation contained in paragraph "46" of the Fourth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

47. Denies each and every allegation contained in paragraph "47" of the Fourth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE FIFTH COUNT

48. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "47" of the Complaint.

49. Denies each and every allegation contained in paragraph "49" of the Fifth Count of the Complaint.

50. Denies each and every allegation contained in paragraph "50" of the Fifth Count of the Complaint.

51. Denies each and every allegation contained in paragraph "51" of the Fifth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

52. Denies each and every allegation contained in paragraph "52" of the Fifth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE SIXTH COUNT

53. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "52" of the Complaint.

54. Denies each and every allegation contained in paragraph "54" of the Sixth Count of the Complaint.

55. Denies each and every allegation contained in paragraph "55" of the Sixth Count of the Complaint.

56. Denies each and every allegation contained in paragraph "56" of the Sixth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

57. Denies each and every allegation contained in paragraph "57" of the Sixth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE SEVENTH COUNT

58. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "57" of the Complaint.

59. Denies each and every allegation contained in paragraph "59" of the Seventh Count of the Complaint except admits that plaintiff, Jill A. Azzarello was and still is a resident of the County of Erie in the State of New York.

60. Admits to the allegations contained in paragraph "60" of the Seventh Count of the Complaint.

61. Admits to the allegations contained in paragraph "61" of the Seventh Count of the Complaint.

62. Denies each and every allegation contained in paragraph "62" of the Seventh Count of the Complaint except admits that defendant CDL (NEW YORK) L.L.C. was authorized to conduct business in the State of New York at all times hereinafter mentioned.

63. Denies each and every allegation contained in paragraph "63" of the Seventh Count of the Complaint.

64. Denies each and every allegation contained in paragraph "64" of the Seventh Count of the Complaint.

65. Denies each and every allegation contained in paragraph "65" of the Seventh Count of the Complaint.

66. Denies each and every allegation contained in paragraph "66" of the Seventh Count of the Complaint.

67. Denies each and every allegation contained in paragraph "67" of the Seventh Count of the Complaint.

68. Denies each and every allegation contained in paragraph "68" of the Seventh Count of the Complaint.

69. Denies each and every allegation contained in paragraph "69" of the Seventh Count of the Complaint.

70. Denies each and every allegation contained in paragraph "70" of the Seventh Count of the Complaint.

71. Denies each and every allegation contained in paragraph "71" of the Seventh Count of the Complaint.

72. Denies each and every allegation contained in paragraph "72" of the Seventh Count of the Complaint.

73. Denies each and every allegation contained in paragraph "73" of the Seventh Count of the Complaint.

74. Denies each and every allegation contained in paragraph "74" of the Seventh Count of the Complaint.

75. Denies each and every allegation contained in paragraph "75" of the Seventh Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

76. Denies each and every allegation contained in paragraph "76" of the Seventh Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE EIGHTH COUNT

77. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "76" of the Complaint.

78. Denies each and every allegation contained in paragraph "78" of the Eighth Count of the Complaint.

79. Denies each and every allegation contained in paragraph "79" of the Eighth Count of the Complaint.

80. Denies each and every allegation contained in paragraph "80" of the Eighth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

81. Denies each and every allegation contained in paragraph "81" of the Eighth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE NINTH COUNT

82. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "81" of the Complaint.

83. Denies each and every allegation contained in paragraph "83" of the Ninth Count of the Complaint.

84. Denies each and every allegation contained in paragraph "84" of the Ninth Count of the Complaint.

85. Denies each and every allegation contained in paragraph "85" of the Ninth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

86. Denies each and every allegation contained in paragraph "86" of the Ninth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE TENTH COUNT

87. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "86" of the Complaint.

88. Denies each and every allegation contained in paragraph "88" of the Tenth Count of the Complaint except admits that plaintiff, Jill A. Azzarello was and still is a resident of the County of Erie in the State of New York.

89. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "89" of the Tenth Count of the Complaint.

90. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "90" of the Tenth Count of the Complaint.

91. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "91" of the Tenth Count of the Complaint.

92. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "92" of the Tenth Count of the Complaint.

93. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "93" of the Tenth Count of the Complaint.

94. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "94" of the Tenth Count of the Complaint.

95. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "95" of the Tenth Count of the Complaint.

96. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "96" of the Tenth Count of the Complaint.

97. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "97" of the Tenth Count of the Complaint.

98. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "98" of the Tenth Count of the Complaint.

99. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "99" of the Tenth Count of the Complaint.

100. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "100" of the Tenth Count of the Complaint.

101. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "101" of the Tenth Count of the Complaint.

102. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "102" of the Tenth Count of the Complaint.

103. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "103" of the Tenth Count of the Complaint.

104. Denies each and every allegation contained in paragraph "104" of the Tenth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

105. Denies each and every allegation contained in paragraph "105" of the Tenth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE ELEVENTH COUNT

106. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "105" of the Complaint.

107. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "107" of the Eleventh Count of the Complaint.

108. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "108" of the Eleventh Count of the Complaint.

109. Denies each and every allegation contained in paragraph "109" of the Eleventh Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

110. Denies each and every allegation contained in paragraph "110" of the Eleventh Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE TWELFTH COUNT

111. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "110" of the Complaint.

112. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "112" of the Twelfth Count of the Complaint.

113. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "113" of the Twelfth Count of the Complaint.

114. Denies each and every allegation contained in paragraph "114" of the Twelfth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

115. Denies each and every allegation contained in paragraph "115" of the Twelfth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE THIRTEENTH COUNT

116. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "115" of the Complaint.

117. Denies each and every allegation contained in paragraph "117" of the Thirteenth Count of the Complaint except admits that plaintiff, Jill A. Azzarello was and still is a resident of the County of Erie in the State of New York.

118. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "118" of the Thirteenth Count of the Complaint.

119. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "119" of the Thirteenth Count of the Complaint.

120. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "120" of the Thirteenth Count of the Complaint.

121. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "121" of the Thirteenth Count of the Complaint.

122. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "122" of the Thirteenth Count of the Complaint.

123. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "123" of the Thirteenth Count of the Complaint.

124. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "124" of the Thirteenth Count of the Complaint.

125. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "125" of the Thirteenth Count of the Complaint.

126. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "126" of the Thirteenth Count of the Complaint.

127. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "127" of the Thirteenth Count of the Complaint.

128. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "128" of the Thirteenth Count of the Complaint.

129. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "129" of the Thirteenth Count of the Complaint.

130. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "130" of the Thirteenth Count of the Complaint.

131. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "131" of the Thirteenth Count of the Complaint.

132. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "132" of the Thirteenth Count of the Complaint.

133. Denies each and every allegation contained in paragraph "133" of the Thirteenth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

134. Denies each and every allegation contained in paragraph "134" of the Thirteenth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE FOURTEENTH COUNT

135. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "134" of the Complaint.

136. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "136" of the Fourteenth Count of the Complaint.

137. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "137" of the Fourteenth Count of the Complaint.

138. Denies each and every allegation contained in paragraph "138" of the Fourteenth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

139. Denies each and every allegation contained in paragraph "139" of the Fourteenth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

ANSWERING THE FIFTEENTH COUNT

140. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraphs numbered "1" through "139" of the Complaint.

141. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "141" of the Fifteenth Count of the Complaint.

142. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "142" of the Fifteenth Count of the Complaint.

143. Denies each and every allegation contained in paragraph "143" of the Fifteenth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

144. Denies each and every allegation contained in paragraph "144" of the Fifteenth Count of the Complaint and begs leave to refer all questions of law to the court at the trial of this action.

AS A FIRST AFFIRMATIVE DEFENSE

145. Some or all of the answering defendants were not served in accordance with the provisions of the Federal Rules of Civil Procedure and the court, therefore, lacks jurisdiction over the person of the answering defendants.

AS A SECOND AFFIRMATIVE DEFENSE

146. The accident and damages alleged in the complaint were caused or contributed to by the negligence of the plaintiff.

AS A THIRD AFFIRMATIVE DEFENSE

147. Plaintiff has failed to mitigate her damages.

AS A FOURTH AFFIRMATIVE DEFENSE

148. The liability of these answering defendants, if any, to the plaintiff for non-economic loss is limited to their equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff could have obtained jurisdiction with due diligence pursuant to New York's CPLR Article 16.

AS A FIFTH AFFIRMATIVE DEFENSE

149. The medical charges incurred by plaintiff, if any, were unnecessary and unreasonable.

AS A SIXTH AFFIRMATIVE DEFENSE

150. In the event the plaintiff recovers a verdict or judgment against these answering defendants, then said verdict or judgment must be entered in accordance with New York's CPLR § 50-B.

AS A SEVENTH AFFIRMATIVE DEFENSE

151. In the event plaintiff recovers a verdict or judgment against these answering defendants, then said verdict or judgment must be reduced pursuant to New York's CPLR 4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, workers' compensation or employee benefit programs.

AS AN EIGHTH AFFIRMATIVE DEFENSE

152. Plaintiff has failed to join all necessary and indispensable parties in some or all of the causes of action who would be responsible for the damages alleged in plaintiff's Complaint.

AS A NINTH AFFIRMATIVE DEFENSE

153. These answering defendants did not owe the plaintiff any of the duties alleged in this lawsuit.

AS A TENTH AFFIRMATIVE DEFENSE

154. That answering defendants were without notice of any of the purported conditions alleged in this Complaint.

AS AN ELEVENTH AFFIRMATIVE DEFENSE

155. That there was a lack of privity between plaintiff and the answering defendants with respect to all issues in the applicable law to this case.

AS A TWELFTH AFFIRMATIVE DEFENSE

156. The allegedly injured plaintiff failed to take reasonable and/or adequate steps and precautions for her own safety.

AS A THIRTEENTH AFFIRMATIVE DEFENSE

157. Plaintiff's complaint fails to state a cause of action against these answering defendants, and plaintiff's action must therefore be dismissed.

AS A FOURTEENTH AFFIRMATIVE DEFENSE

158. The plaintiff assumed and accepted all risks associated with the transactions alleged in the Complaint, and all claims against the answering defendants must therefore be dismissed.

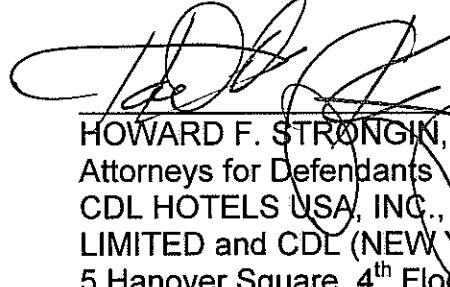
AS A FIFTEENTH AFFIRMATIVE DEFENSE

159. The Verified Complaint of plaintiff should be dismissed on the grounds that this jurisdiction is an improper jurisdiction under the doctrine of forum non-conveniens.

Dated: New York, New York
April 10, 2008

Yours, etc.

STRONGIN ROTHMAN & ABRAMS, LLP



HOWARD F. STRONGIN, ESQ. (HS-7851)
Attorneys for Defendants
CDL HOTELS USA, INC., CDL (NYL)
LIMITED and CDL (NEW YORK) L.L.C.
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(212) 931-8300

TO:

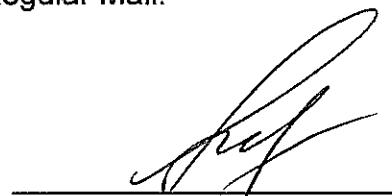
Kevin M. Maley, Esq.
Quinn, McGarry, Caffery & Patricia, P.C.
1600 Statler Towers
Buffalo, NY 14202
(716) 856-6066
Attorney for Plaintiff

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

LYUDMILA TIMOSHENKO, being duly sworn, deposes and says that she is not a party to this action, is over the age of 18 years, and resides in Middlesex County, New Jersey. That on this 10th day of April, 2008 she served the within **AMENDED ANSWER** upon:

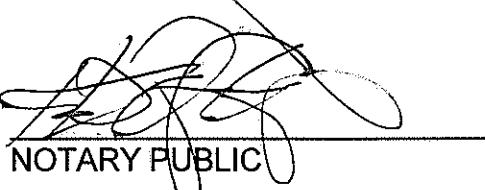
Kevin M. Maley, Esq.
Quinn, McGarry, Caffery & Patricia, P.C.
1600 Statler Towers
Buffalo, NY 14202
(716) 856-6066
Attorney for Plaintiff

by depositing a true copy of same securely enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, by Regular Mail.



LYUDMILA TIMOSHENKO

Sworn to before me this
10th day of April, 2008



NOTARY PUBLIC

HOWARD E. STRONGIN
Notary Public, State of New York
No. 02ST4758421
Qualified in NASSAU County
Commission Expires DECEMBER 31, 2010